

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 26437 of 1999

Dated:01-08-2005

Between:

T.V.V.S.Narayana S/o Late Mallikarjuna Rao
R/o Dolphin Tailors, Main Road, Mandapeta, East Godavari District.

..... PETITIONER

AND

- 1 The Depot Manager, A.P.S.R.T.C.,
Rmachandrapuram, East Godavari District.
- 2 The Presiding Officer, Industrial Tribunal-Cum-Labour Court,
Visakhapatnam.

...RESPONDENT(S)

THE HONOURABLE SRI JUSTICE C.V.RAMULU

W.P.NO.26437 OF 1999

ORDER:

This writ petition is filed by the workman being aggrieved by the Award passed by the Labour Court at Vishakapatnam in I.D.No.121 of 1996 dated 24-7-1999.

It is the case of the petitioner that he was appointed as Conductor in the year 1978 in APSRTC. On 10-8-1995 while he was conducting the bus A.P.9 Z- 3710 on the route from Ramachandrapuram to Vishakapatnam, a check was exercised and certain cash and ticket irregularities were alleged against him and he was placed under suspension and charge sheet was issued. The petitioner submitted his explanation to the charge sheet. Having not satisfied with the explanation, the respondent-management ordered for a detailed enquiry in to the matter. The Enquiry Officer conducted enquiry holding the petitioner as guilty of the charges. The Disciplinary Authority after following the procedure passed order of removal dated 3-11-1995. Aggrieved by the same, the petitioner filed appeal before the Competent Authority and the same was also dismissed on 30-1-1996. Having no other option, the petitioner raised dispute under Section 2A(2) of the Industrial Disputes Act before the labour court, Vishakapatnam, which was taken on file as I.D.No.121 of 1996. According to the petitioner, the labour court erred in appreciating the facts and circumstances of the case and it is not the case of the management that he has committed any fraud or misappropriated the amounts. At the most, even according to the management, he committed some irregularity which cannot be said to be misconduct requiring removal of the petitioner from the service of the Corporation. Hence, this writ petition.

Though no counter is filed the learned counsel appearing for the respondent strenuously contended that the award passed by the labour court is just and proper and even otherwise the petitioner earlier suffered removal from service twice for the similar misconduct. Therefore, no interference can be made into the award passed by the labour court.

I have given my earnest consideration to the respective submissions made by

the learned counsel on either side and perused the award passed by the labour court and other material made available on record.

At the outset, I am of the opinion that the labour court has committed error in not properly evaluating the evidence placed before it and not granting any relief to the petitioner. Admittedly the charge was that the petitioner failed to issue ticket to the passenger even after collecting Rs.100/- from him at his boarding point itself and also failed to return the excess amount to him, who boarded the bus at Kakinada bound to Vishakapatnam ex-stages 3 to 14 and he further closed the S.R. for all the denominations at stage No.4. In the spot explanation, the petitioner-workman stated that while conducting bus on 10-8-1995 at 6.45 hours trip one passenger boarded the bus at Kakinada and gave Rs.100/- at Bhanugudi for fare to Vishakapatnam and he returned Rs.10/- as a change and in between he was busy in issuing tickets to other passengers and while closing the S.R., he found one ticket difference and he was about to issue the ticket to the passenger where as the checking officials found that the passenger gave Rs.100/- at his boarding point and he was not issued with ticket and the workman closed S.R. up to stage No.4 without issuing ticket to the said passenger. The petitioner while accepting the mistake stated that it had occurred only due to rush but not with a malafide intention. In fact even in the enquiry, the petitioner stated that it was a mistake on his part and as soon as he came to know about it, he issued tickets after collecting the amount but there was no malafide intention on his part.

Even as per the enquiry officer's report, the petitioner was about to verify the tickets in the bus and when TTIs came, he informed the fact . The TTIs also agreed that the petitioner has informed that he was in the process of verification and issue of tickets. The enquiry officer noted that the act of the conductor in not issuing ticket even after collecting the amount, though not willful, but it was a fact, the same was also confessed by the conductor but explained that the passenger did not respond when he asked twice and thrice about whether anybody has to take ticket but the said passenger who paid Rs.100/- not obtained ticket also did not respond. However, it was observed by the enquiry officer that the petitioner is a paid employee of the organization and he has not fulfilled his duties correctly thus it is very clear that the conductor failed to issue ticket of Rs.45/- worth to passenger who boarded at Kakinada, bound to Vishakapatnam even after collecting Rs.100/- from him at Kakinada and gave Rs.10/- to the passenger as change and also failed to

return the remaining amount of Rs.,45/-. However, TTIs made the conductor to return the remaining amount and to issue the ticket. Even the labour court came to the conclusion that the check place was Chitrada and by that time the conductor should have completed all the formalities but the conductor has not completed means that he has not issued tickets when the bus was in standing position and issued tickets in running bus there was every possibility of this type of irregularities. The conductor when found difference, has not stopped to verify but he allowed the bus to run which means that there was no job responsibility to the conductor and has violated the system and procedure in issuing the tickets to the passengers and their counting. From all the above what all it can be inferred is that there was some mistake on the part of the petitioner while issuing tickets and counting the passengers. Petitioner all through has been stating that he has received Rs.100/- and gave Rs.10/- and when he asked for ticket, there was no person who responded as to taking ticket and when he verified after issuance of all tickets, he found that one person was excess. Under those circumstances, the mistake seems to have happened. Even enquiry officer and the labour court found that the mistake was committed by the petitioner and there was no willful default on the part of the petitioner in issuing tickets. Under those circumstances, I am of the considered opinion that the labour court has committed an error in not considering as to the proportionality of the punishment imposed on the petitioner. I am of the opinion that though there was some misconduct, it is in the nature of some irregularity and not misappropriation or defrauding the funds or revenues of the Corporation. Though the petitioner suffered earlier two punishments for the similar misconduct, I am of the opinion that the present misconduct does not call for removal of the petitioner from service and punishment of removal from service is disproportionate to that of the misconduct alleged against the petitioner. Therefore, the award passed by the labour court is liable to be set-aside.

In the result, the W.P. is allowed directing the management to reinstate the petitioner with continuity of service but without any back wages and other attendant benefits. Further the petitioner is not entitled for any increments even notionally for the period he was out of service. No order as to costs.

C.V.RAMULU,J

01-08-2005

Stp